

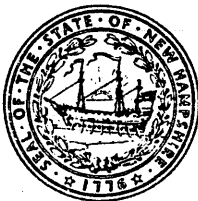
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DEPUTY ATTORNEY GENERAL
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The State of New Hampshire



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Attorney General

Concord

July 1, 1976

His Excellency, Meldrim Thomson, Jr.
State House
Concord, New Hampshire 03301

Your Excellency:

In your letter of March 15, 1976 you have asked for our opinion concerning the two following questions:

1. Does RSA 206:2, relative to the appointment of Fish and Game Commissioners, permit the Governor and Council to appoint a person who designates himself as an Independent?
2. If the answer to #1 is in the affirmative, would the provisions of RSA 206:2 be violated if such a person were to vote in a primary and thus designate himself a Republican or Democrat and thus exceed the statutory limitation for whatever period of time he must retain such designation (i.e. until such time as he may re-register as an Independent?)

For the reasons that follow, our answer to both questions is "Yes."

RSA 206:2 provides that:

The commission shall consist of ten members, each well informed on the subject of wild life conservation and restoration, appointed by the governor with the advice of the council. Each member of the commission

shall be a resident of a different county in the state and not more than six commissioners shall be of the same party. If a vacancy shall occur in said commission, it shall be filled in the same manner for the unexpired term. [Emphasis added.]

Your questions address themselves only to the Fish and Game Commission (Commission) membership limitation which prevents more than six members from being "of the same party." The provisions of RSA 56:1 define what is meant by the term "party" as: "any political organization which at the preceding election polled at least three per cent of the entire vote for governor." Currently, only the Republican and Democratic Parties fall within this definition. Therefore, the party limitation contained in RSA 260:2 presently prohibits more than six Republicans or six Democrats from being members of the Commission at any one time.

This limitation does not apply to a person customarily referred to as an "Independent", since an Independent by definition is a person whose voter registration does not include a party membership designation. See RSA 56:39 and 40. Not being a member of any party, the party membership limitation would not apply to such a person. This conclusion is bolstered by the legislative history of RSA 260:2 which reveals no evidence that the legislature intended to prevent non-party members from being members of the Commission. The Governor and Council, therefore, may appoint to the Commission a person who designates himself as an Independent.

As to your second question, we are of the opinion that a member of the Commission cannot, consistently with maintaining his membership on the Commission, change his party membership if such a change would cause the party membership limitation to be exceeded. Therefore, if a member of the Commission, who is not a registered member of any party, were to join a political party under RSA 56:39, 40 or 44 whose membership quota on the Commission were full, then the statutory membership limitation would be violated and a constructive voluntary resignation from the Commission would have occurred, leaving a vacancy to be filled. State v. Boiselle, 83 N. H. 339 (1929); Attorney General v. Marston, 66 N. H. 485 (1891).

However, because a vacancy occurring in this manner would depend upon a conclusive determination that, in fact, six members of the Commission were registered with the party to which the additional member had switched, it is recommended that prior to filling an apparent vacancy arising in this manner, the Governor and Council seek to

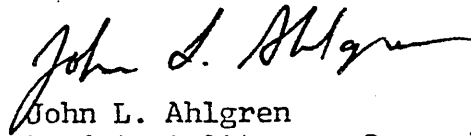
preclude any possible error in assuming the existence of the vacancy either by obtaining an actual resignation from the switching member (Johnston v. Wilson, 2 N.H. (1820)), or by seeking to have this Office institute a petition for a declaratory judgment so that a formal judicial declaration of vacancy would be achieved.

It seems premature at this time to consider what effect a Commissioner's official actions would have if they occurred after the time when he had changed his party membership in such a way that the Commission membership limitation were exceeded.

Respectfully yours,



David H. Souter
Attorney General



John L. Ahlgren
Assistant Attorney General

DHS:JLA:dc